

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 23 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JOSHI NARAN HIMMATRAM

Versus

SHREE BAPLA SWETAMBAR MURTI - PUJAK JAIN MAHAJAN PANCH

Appearance:

MR CL SONI for Petitioners

MR NS SHETH for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/02/98

ORAL JUDGEMENT

Rule. Respondents No.2 and 3 are not considered to be necessary party for disposal of the present Revision Application. In view of this, no notice is issued to respondents No.2 and 3.

This is a Revision Application under section 115 CPC against the order dated 22.9.1997 passed by the

learned Civil Judge (JD), Dhanera below Exh. 12 rejecting the petitioner third party's application for joining as party-respondents in Civil Suit No. 85/97.

2. The plaintiff in Civil Suit No.85/97 is a registered trust and has got immovable properties like Caravansary, Asylum, well and open land in village Bapla. The property is being used for religious activities. There is a public road touching the Caravansary. On this public place, the defendants are constructing a temple of God Ramdev Pir. The construction touches the wall of Caravansary. It is thus prayed in the said suit to remove the temple of God Ramdev Pir. In the said suit, the present third party-petitioners filed application for joining as defendants. The applicants are said to be persons belonging to Hindu community. It is also stated that the present applicants-third party respondents have also filed a suit for declaration and injunction praying inter alia that the defendant-trust be restrained from removing the temple. Application of the third party has been rejected by the impugned order mainly on the ground that same relief has been claimed in another Suit No.88/97.

3. Heard the learned Advocates for the parties. In my view, the learned Judge has committed material illegality in exercising jurisdiction in rejecting the application for joining the third party as party defendants. The main consideration for permitting the third party as defendants in the suit should be that the presence of the said party is necessary for determination of the real issue in dispute. The applicants are claiming that they have a right to construct the temple of God Ramdev Pir. The case of the plaintiff is that the temple of God Ramdev Pir be removed. This controversy cannot be determined in absence of the applicants.

4. In view of the above, this Revision Application is allowed and the order dated 22.9.1997 passed by the Civil Judge (JD), Dhanera is quashed and set aside. Application Exh.12 filed by the present petitioners is granted. Considering the facts of the case, it is further directed that Civil Suit No.88/97 shall be consolidated and tried with Civil Suit No.85/97. Rule made absolute.

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msp.